

## **PART III**

### **PREPARING LEGISLATION**

Discussion under this part attempts to cover each phase of the actual mechanics of bill drafting, from the initial preparation of a rough draft through the stapling of the official jackets on the copies of the bill to be introduced into the Legislature. This will by no means be an exhaustive treatment of "technique," something which simply cannot be taught. Like all other writing, bill drafting is primarily a matter of experience and the observation of certain established rules. But, it is hoped that a number of valuable pointers, rules of thumb, and words of wisdom may emerge.

If you intend to draft a bill in foolish disregard of the bulk of this manual, you should, at the very least, consult the checklists on pages 69 and 97.

## **DRAFTING**

### **PRELIMINARY CONSIDERATIONS**

Unlike a press release, a political campaign speech, or directions on how to assemble metal shelving, the language chosen to express the intent of the Legislature must be free of ambiguity.

In a sense, the drafter should think of himself or herself as in an adversarial position with those attorneys, somewhere in the future, who may try to twist his or her words and arrive at an interpretation quite different from that

which was intended by the drafter and the sponsor. Extreme care should be taken to design a package of words which expresses the desired intent, or which will produce the desired result.

The following is a brief checklist of matters which should be considered when preparing to draft almost any bill, regardless of its subject:

**What precisely is the object of the proposal?**

Be sure you understand exactly what is intended. If you don't, there is little likelihood that you will express the idea in technically sufficient language. The legislator may not have a clear idea of the most appropriate method to achieve the desired result. It is never the drafter's place to support or oppose an idea presented to him or her for preparation. But it is the drafter's obligation to ask the requester those questions which will help to crystallize the proposal in such a way that it may be reduced to precise expression.

**What does existing law presently provide?**

Occasionally, it is found that an existing statute already covers a subject adequately. More common is the bill which is drawn and passed in ignorance of existing law. When this happens, and the bill becomes law in the context of previously undiscovered provisions or court decisions, the result may be so different from that envisioned by the author as to be disconcerting. Therefore, existing law must be checked prior to the drafting of a bill, not only to determine if a minor amendment may suffice, but primarily to ensure that the contemplated

enactment will not be in conflict with provisions of law previously enacted. This process has been greatly facilitated by the ability to search the current law for specific words, phrases, and citations via computer.

### **Is the proposal constitutional?**

Many brilliant suggestions are found, upon examination, to have the single fault of unconstitutionality. The Florida Constitution, unlike the United States Constitution, is not a grant of power. Rather, it is a collection of provisions which restrict the Legislature from fully exercising its discretion. Needless to say, if a bill is prepared without consideration of a pertinent constitutional restriction, the result may be painfully embarrassing to everyone involved.

### **What is the proper approach?**

Try to begin a rough draft with a definite plan for organizing and arranging the proposed content of the bill. The drafter should critically examine the approach that he or she has chosen and be satisfied that it meets the tests of clarity and legality.

## **GENERAL SUGGESTIONS**

### **Look to work already done**

Few legislative proposals are completely new. Most of them amend, replace, or supplement existing statutes on a subject. If the proposal embraces a

substantially new concept, often a model or prior pattern can be found in the statutes of other states, federal acts, unenacted proposals of previous sessions, or in publications such as *Suggested State Legislation*.

### **Avoid "technician's verbosity"**

"Technician's verbosity" is an affliction commonly found among lawyers, university professors, and, alas, bill drafters. It is characterized by the compulsion to "never use one word where two will do." This tendency not only results in much unnecessary typing, proofreading, printing, and bulk in the laws of the nation, but also increases the chances for ambiguity.

One of the most important considerations in the drafting of any legislative document is that its language should be simple and direct. The objective of otherwise fine legislation is often obscured by the use of doubtful language in the drafting process. Simplicity of phrase and directness of approach are always to be preferred. The clarity provided by simple language will help to ensure an understanding of proposed legislation by members of committees or councils and the public. Short, simple sentences are easier to read and understand than are long, complex sentences. However, as useful as the principle of brevity is in legislative drafting, clarity should not be sacrificed simply for the sake of brevity.

### **Be consistent**

Clarity will be greatly aided by consistency. Use the same word or phrase throughout the bill to express the same thought or meaning. Avoid the use of

synonyms. If two different words which ordinarily mean the same thing are used in the same bill, a court would be inclined to suspect that a distinction in their meanings was intended.

### **Choose terminology with care**

Be careful not to use terms in ignorance of their established legal meanings. There are two pitfalls in particular to avoid: (a) court decisions may have interpreted certain words or phrases to mean something other than what you would ordinarily imagine, and (b) a section of the statutes which you intend to amend may contain a word which an earlier section of the same chapter defines in an unusual way.

### **Prepare the title last**

Although the title appears at the head of all bills and resolutions, it is best to leave its preparation until the body of the bill has been completed. To prepare the title first is to speculate as to all the details the final product will contain. Occasionally, this can be done without risk. But the better practice is to construct the title using the directories and provisions of the completed draft as a guide.

## **SPECIFIC SUGGESTIONS**

### **Definitions**

The drafter should restrain himself or herself from providing definitions. In the first place, certain words and terms of frequent occurrence are defined in s. 1.01, Florida Statutes. If a word is to be used in the same sense as defined in that section, it is ordinarily unnecessary to define it again in your bill. In the second place, your bill may be adding text to a chapter which already contains the definitions that you need. There is also a danger of making new or special definitions either too broad or too narrow. However, if the Legislature chooses to define the language it uses in a bill, its definition is binding on the courts even though the definition does not coincide with the ordinary meaning of the word or term used.

It is often better to leave words and terms to be construed and interpreted according to their usual dictionary definitions or general legal usage unless the use of technical terms is required because of the subject matter of the bill. It is helpful, of course, and considered good drafting practice, to define technical words and terms having no popular meaning in commonly understood language.

Definitions may also be used to limit or extend the meaning of a word, to give an exact meaning to a word that has several dictionary meanings, to avoid repeating a particular phrase or the full title of an officer or agency, or to give an exact meaning to a word that is used in a sense other than its dictionary meaning.

**PLEASE! NEVER WRITE SUBSTANTIVE LAW INTO A DEFINITION.**

If you do, the result can be a substantive statutory provision which is very difficult to locate. An example of this poor drafting practice can be observed in s. 564.01, Florida Statutes.

When the intent of the definition is to restrict or limit the usage of a word, use "means." When the intent is to broaden or extend the usage, use "includes." Do not use "means and includes."

If definitions are used, the bill should be carefully checked to make sure that the meaning ascribed to a word in its definition is the exact meaning intended wherever the word appears in the bill. Indeed, we occasionally find a law which should have been checked to make sure that the defined word appears in the text at all.

If a definition applies to only one section of a bill, it should be incorporated in the appropriate section.

If words and terms applicable to more than one section of a bill are defined, the definitions should be placed in a single "definition section," which immediately precedes the main provisions of the bill. Example:

Section 1. As used in this act, unless  
the context otherwise requires:  
    (1) "Action" includes counterclaim,  
    setoff, and suit in equity.  
    (2) "Delivery" means voluntary transfer  
    of possession from one person to another.

Many terms are currently defined in Florida Statutes, and these are often useful as models. They may be easily found by consulting the current edition of

the publication *Florida Statutes Definitions Index*, which is distributed by the Division of Statutory Revision.

## **Provisos**

The purpose of a proviso is to qualify or restrict the generality of a preceding declaration. Provisos are all too frequently used indiscriminately, being freely tacked on to sentences and sections, introduced by such phrases as "provided that" or "provided further that." Often, the material added may be an additional declaration, a new idea not necessarily connected with the preceding clause. A proviso is not properly used if it enlarges the scope of the statement to which it is attached.

Make sure you understand exactly what kind of limitation you want to impose, and phrase it accordingly. If an exception, a limitation, or a qualification is called for, introduce it with the proper language, such as "except that" or "but" or "however." It is often better simply to start a new sentence. Sometimes, an exception may be more conveniently stated as a condition at or near the beginning of a sentence. If there are many conditions or exceptions, they may be placed in a tabulated list at the end of the sentence.

## **Choosing new section numbers**

The authority to select Florida Statutes section numbers for newly created sections is reserved by s. 11.242, Florida Statutes, to the Division of Statutory



Revision. However, new statute provisions are often created under numbers assigned by the drafter. (See pages 82-84 for specific instructions.)

## **Cross references and adjectival references**

**1. References within the text** When amending or creating text which contains a cross reference to another statutory provision or section of the bill, it is important to look at the referenced provision or section to verify the accuracy of the reference. Also, when revising or amending a bill which includes sections containing numerical cross references to other parts of the bill, be sure to correct these references wherever necessary.

**2. Statutory cross references** When repealing, renumbering, or substantially changing the content of a statute section, it is essential to check any references to that section that may exist in the statutes and conform them where necessary. A preliminary search for these references can be made by scanning the chapter in which the section appears and any related chapters, and by checking the Florida Statutes Index. However, the only reliable method is to conduct a computer search using the "Search and Browse" program available on the Legislature's Intranet, which will indicate all occurrences of the section number being amended or repealed.

**3. Nonnumerical references** A reference such as "said hearing" should never be used to refer to a provision which is outside the statute or bill section in which it appears. Such a phrase is sometimes used to refer to provisions which lie within the same section if the context does not allow for misinterpretation of

intent, but in most cases the more direct phrase "the hearing" would be preferable. Avoid similar vague terms such as "above," "below," or "herein" in cross references; they do not convey specific information and can be confusing.

### **References to effective date**

It is sometimes necessary in the text of a bill to refer to the time at which the bill is going to take effect. Suppose a bill has an effective date of October 1, 2005, and somewhere in the text of the bill we find: "Every person registered with the board on October 1, 2005...." If the purpose of mentioning the date in the text is simply to tie it to the effective date, it is far better practice to say: "Every person registered with the board on the effective date of this act...." This avoids the risk of error which arises if the effective date in the bill is changed by amendment. If the bill becomes law, the statute editors have the authority to change the phrase "the effective date of this act" so that the actual effective date will appear in the text of the Florida Statutes.

If a bill has multiple effective dates, references in the text to "the effective date of this **act**" will be ambiguous. Use a more specific term, such as "the effective date of this **section**."

### **Administrative provisions**

Most legislation of substantial scope will be administered either by an agency in existence or one created by the proposed act. Unless specifically superseded, the provisions of the Administrative Procedure Act found in chapter

120, Florida Statutes, will control. This chapter provides uniformity for the rulemaking power of state agencies for their enforcement procedures and for appeals to the courts. Its existence also operates to make the repetition of many administrative provisions in bills unnecessary.

## **Repeals**

The drafting of bills which seek to repeal provisions of existing law involves considerations not always present in amendatory acts. A repeal section should be used only when it is desired to eliminate a specific whole provision from the law completely. It should be expressed in a concise and specific manner. Example:

Section 2. Section 800.01, Florida  
Statutes, is repealed.

The drafter should be on the lookout for cross references in the text which is being repealed. If the section referred to is affected by the repeal, it may require amendment, or perhaps repeal, itself. In addition, a search should be made for any existing references to the section being repealed.

## **SUBMISSION OF REQUESTS FOR DRAFTING TO THE HOUSE BILL DRAFTING SERVICE**

House Rules govern the filing of bills for introduction and provide that all bills (other than a general appropriations bill, concurrent resolutions relating to organization of the Legislature, resolutions relating to organization of the House, reviser's bills, reapportionment bills or resolutions, and recall of acts from the

Governor) shall either be prepared or, in the case of local bills, reviewed by the House Bill Drafting Service. The Rules further provide that after completion and delivery by the House Bill Drafting Service, no change shall be made in the text or title of the bill without returning the bill to the House Bill Drafting Service prior to filing with the Clerk of the House.

The Director of the House Bill Drafting Service is required to notify any member proposing a bill if an identical or similar bill has been filed and provide that member with the name of the sponsor.

It is crucial to keep these rules in mind.

#### **1. SUBMIT REQUESTS IN LEAGIS**

All requests for drafting of legislation must be submitted electronically to the House Bill Drafting Service via LEAGIS, the WORD-based computer system of the House of Representatives. The House Office of Information Technology provides staff training to both district and local house staff with respect to the proper method of preparing and submitting draft requests. The LEAGIS system allows both district and local staff to prepare clear and accurate draft requests and eliminates problems frequently encountered in the past such as the possibility of using out-of-date or inaccurate Florida Statute text in the preparation of such requests. **Proposed drafts are to be submitted to Bill Drafting as attachments to the draft request.** The LEAGIS system allows staffpersons to indicate changes in a draft with the "Track Changes" option or the highlighting feature, and allows for commentary or explanation at any point in the draft using the "Insert Comment" and "Toggle Commentary" options. **It is**

important to remember, especially when submitting a request for a "redraft" of a bill that has already been prepared by House Bill Drafting, that you indicate the changes you are making in the revised version of the draft using these options and features. **Do not submit a completely new version of the draft with no indication of the changes you are making.**

Doing so will greatly increase the amount of time it takes to prepare your request.

## **2. FOLLOW THIS BASIC QUALITY CONTROL CHECKLIST**

a. As has always been the case, if amending the present law, making sure that you are working with the most current version of Florida Statute text is always the primary consideration in preparing a draft. With the advent of the LEAGIS system, the possibility of working with outdated or inaccurate statute text is minimized since LEAGIS will only provide the user with the most current statute text. There is, however, still the need to check for amendments that may have been made since the most recent publication of the Florida Statutes. For instance, when the Legislature holds a special session after the publication of the Florida Statutes and bills are passed which add or amend sections of the statutes, there is a period of time during which these sections of law have not been engrossed into the Florida Statutes electronic database. One would need to be mindful of this fact and check any appropriate special session citator for pertinent amendments or additions when preparing a draft prior to the engrossing of such acts. Also, do not overlook footnote versions of statute text or future effective dates that might be indicated in footnotes to statutes. If you are unsure of the current version of any statute, please check with House Bill Drafting.

b. If creating new provisions, make sure that the present law does not already cover the situation. For the new idea as a whole, this means checking ASearch and Browse@and the subject index of the Florida Statutes, including a check of any session law that contains enactments more recent than those contained in the Florida Statutes. As to each feature of the new idea, this means checking the chapter in which it is to be placed for applicable definitions, rules of construction, penalties, etc., as well as determining the logic of the placement.

c. If amending the present law, make sure that you amend all sections which need to be amended to accomplish your desired result without creating statutory inconsistencies. It is often necessary to conform references or provisions in sections other than the primary section being amended.

d. If proposed new language contains a cross reference to a section in the Florida Statutes or is affected by an existing cross reference, make sure that the cross reference does not have an unintended effect on your intended result.

e. Make sure that the bill complies in structure and in content with both the appropriate legislative Rules and with the constitutional requirements found in Section 6 of Article III of the Florida Constitution, which reads:

SECTION 6. Laws.--Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title. No law shall be revised or amended by reference to its title only. Laws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a subsection. The enacting clause of every law shall read: "Be It Enacted by the Legislature of the State of Florida:".

f. Give specific consideration to the effective date that is appropriate for the subject matter and intent of your draft. Effective dates can get quite complicated. Our office will be glad to consult with you on any effective date problem.

g. Read what you have written critically. Better yet, have someone else read it. Remember that if it ends up in court, the court will only have the statutory language to read, not your mind. Consider whether your words are reasonably susceptible to being construed as meaning something other than what you intend. If they are, REWRITE!

## **AMENDING FLORIDA STATUTES GENERAL PROCEDURES**

Every section of a bill which proposes to amend or create any provision of the Florida Statutes is introduced by a statement which identifies the particular statute provision by number and directs the action that is to be taken. (Thus, these statements have come to be called "directory language" or "directories.") These statements must cite exactly and accurately the section or subdivision of a section being dealt with, and there must be an accompanying title citation. However, as the following examples illustrate, except for repeals, the title need cite only the section numbers of the particular Florida Statutes followed by the abbreviation "F.S."

Before you start to draft a directory--in fact, before you start to draft a bill--be sure you are using the most up-to-date statute text. Three different sources may have to be consulted:

**1. Florida Statutes** The most recent edition of the official Florida Statutes is published annually. If the current text is there, the pattern is:

DIRECTORY:

TITLE:

Section 98.082, Florida Statutes,  
is amended to read:

amending s. 98.082, F.S.;

**2. Chapter law** If there has been a legislative session and the most recent edition of the statutes have not yet been published, check the Table of Section Changes in the *Digest of General Laws*, which is made available on the “Search and Browse” program and on “Online Sunshine” shortly after every session by the Division of Statutory Revision, to see if the section you are dealing with has been affected. This table is preferable to the Legislative Information Services Division’s citator, *Final Legislative Bill Information*, since it supplies information on editorial, as well as legislative, action. If the section was affected, for several months after the session, the appropriate chapter law of the *Laws of Florida* must be consulted. The pattern for amending such a section is:

DIRECTORY:

TITLE:

Paragraph (a) of subsection (2)  
of section 319.21, Florida Statutes,  
as amended by chapter 2005-134, Laws  
of Florida, is amended to read:

amending s. 319.21, F.S.;



When it is necessary to amend newly created text that was created under a specific statute number:

DIRECTORY:

Section 92.04, Florida Statutes, as created by chapter 2005-71, Laws of Florida, is amended to read:

TITLE:

amending s. 92.04, F.S.;

When new text was not created under a statute number:

DIRECTORY:

Paragraph (b) of subsection (2) of section 5 of chapter 2005-107, Laws of Florida, is amended to read:

TITLE:

amending s. 5, ch. 2005-107, Laws of Florida;

However, several months before the next printed statutes are published, the edited text of an amended or created section--as it will appear in print--will be available on the Legislature's computer system. **The House Bill Drafting Service strongly advises waiting until that version is available.** The citation is then composed as if the statutes had actually been published.

**3. Enrolled bill** When drafting a bill immediately after the close of a legislative session (for a special session, for example), the *Digest of General Laws* will not yet be available. The only source to check for amendments is the citator portion of the *Daily Bill History*, published by the Legislative Information Services Division, which lists amended statute sections. To amend a section that was amended in an immediately preceding session, use the text as shown in the

enrolled copy of the bill, deleting coding. If no chapter law number is available, the pattern is:

DIRECTORY:

Section 83.795, Florida Statutes,  
as amended by House Bill 1075,  
2005 Regular Session, is amended  
to read:

TITLE:

amending s. 83.795, F.S.;

If a chapter law number is available, use the following pattern:

DIRECTORY:

Section 83.795, Florida Statutes,  
as amended by chapter 2005-66, Laws  
of Florida, is amended to read:

TITLE:

amending s. 83.795, F.S.;

When amending new text in an enrolled bill, created with or without a specific statute number, use the same patterns as given under the previous heading 2., substituting the bill number for the chapter law citation where necessary.

## **SPECIAL SESSION DISCLAIMER**

Because information on the activities of the preceding session is incomplete in the special-session situation just described, it has been the practice of the House Bill Drafting Service to include the following section in such bills:

Section \_\_\_\_ Amendments to sections of  
the Florida Statutes enacted by this act shall

not operate to repeal or otherwise negate amendments to the same sections which may have been enacted at the 2005 Regular Session of the Florida Legislature and which are not indicated herein, and full effect shall be given to each, if that is possible. If provisions of this act are in direct conflict with amendments enacted at the 2005 Regular Session of the Legislature, the provisions of this act shall control.

An equally effective and more concise variation of the section above may also be used:

Section \_\_\_\_ . If any law amended by this act was also amended by a law enacted during the 2005 Regular Session of the Legislature, such laws shall be construed to have been enacted during the same session of the Legislature and full effect shall be given to each if possible.

Recommended title provisions for such a section would be:

providing for construction of the act in pari materia;

**-OR-**

providing for construction of the act in pari materia with laws enacted at the 2005 Regular Session;

## **AMENDING SUBDIVISIONS**

## **GENERAL PROCEDURES**

Usually, all subsections or paragraphs to be amended are individually cited in the directory. If this becomes cumbersome, a long series of **consecutive** subdivisions can be grouped, using the word "through" rather than a hyphen.

The following patterns illustrate the most common directory situations:

#### **AMENDING A SUBSECTION**

**DIRECTORY:**

Subsection (3) of section 74.051, Florida Statutes, is amended to read:

**TITLE:**

amending s. 74.051, F.S.;

#### **AMENDING A PARAGRAPH**

**DIRECTORY:**

Paragraph (a) of subsection (4) of section 90.951, Florida Statutes, is amended to read:

**TITLE:**

amending s. 90.951, F.S.;

#### **AMENDING AN INTRODUCTORY PARAGRAPH, FLUSH LEFT MATERIAL, OR SUBDIVISIONS BELOW THE PARAGRAPH LEVEL**

An amendment to the introductory paragraph of a section should be treated as an amendment to the entire section and the entire text of the section should be shown.

An amendment to "flush left" material should be treated as an amendment

to the entire section, subsection, or paragraph to which the flush left material refers and the entire text of the section, subsection, or paragraph should be shown.

The Florida Constitution and the House Rules provide that "laws to revise or amend shall set out in full the revised or amended act, section, subsection or paragraph of a subsection." Accordingly, an amendment to any subdivision lower than a paragraph should be treated as an amendment to the paragraph and the entire text of the paragraph should be shown.

## **ADDING SUBDIVISIONS TO AN EXISTING SECTION**

If the existing section **is presently subdivided** and you wish to add a subsection or subsections at the end so that no renumbering of existing subsections is necessary, show any necessary introductory and flush left material, underline the new subsections, and use the following patterns:

### **DIRECTORY:**

Subsections (3), (4), and (5)  
are added to section 443.181,  
Florida Statutes, to read:

### **TITLE:**

amending s. 443.181,  
F.S.;

When adding one or more subsections **between** existing subsections, it is necessary to renumber existing subsections. Renumbering is accomplished in the directory, so the text of subsections that are to be renumbered and not amended does not need to be shown. Show necessary introductory and flush left material and underline new subsections as usual.

DIRECTORY:

Subsections (5) and (6) of section 322.21, Florida Statutes, are renumbered as subsections (6) and (7), respectively, and a new subsection (5) is added to said section to read:

TITLE:

amending s. 322.21, F.S.;

These same basic patterns apply as well to paragraphs.

For example:

DIRECTORY:

Paragraph (c) is added to subsection (2) of section 39.03, Florida Statutes, to read:

TITLE:

amending s. 39.03, F.S.;

DIRECTORY:

Paragraphs (c), (d), and (e) of subsection (2) of section 276.01, Florida Statutes, are redesignated as paragraphs (d), (e), and (f), respectively, and a new paragraph (c) is added to said subsection to read:

TITLE:

amending s. 276.01, F.S.;

If the existing section **is not presently subdivided**, the entire section must be set forth in the bill. Indent and preface the text of the existing section with an underlined subsection number, and also underline the new subsection or subsections, indicating new material. Use these patterns:

DIRECTORY:

Section 38.17, Florida Statutes, is amended to read:

TITLE:

amending s. 38.17, F.S.;

## **AMENDING AND ADDING SUBDIVISIONS AT THE SAME TIME**

It is possible to add subdivisions to, and amend subdivisions of, a section under one directory statement. Renumber to include necessary introductory and flush left material and show proper coding. When no renumbering is involved:

**DIRECTORY:**

Subsection (6) of section 322.21, Florida Statutes, is amended, and subsection (7) is added to said section, to read:

**TITLE:**

amending s. 322.21, F.S.;

When renumbering is involved:

**DIRECTORY:**

Subsection (5) of section 322.21, Florida Statutes, is renumbered as subsection (6), present subsection (6) is renumbered and amended, and a new subsection (5) is added to said section, to read:

**TITLE:**

amending s. 322.21, F.S.;

## **SPLITTING A SECTION INTO MULTIPLE SECTIONS**

This can get somewhat complicated, so it might be advisable to check with the House Bill Drafting Service, but it is possible to transfer a portion of an existing section to a newly created section. The following example would accomplish this:

DIRECTORY:

Subsections (3) and (4) of section 195.07, Florida Statutes, are renumbered as section 197.25, Florida Statutes, and amended to read:

TITLE:

amending s. 195.07, F.S.;

Underline the new number and catchline and code the text as required.

### **AMENDING MORE THAN ONE CONSECUTIVE SECTION**

It is permissible to amend more than one consecutive section under a single directory. However, structural considerations and the possibility that amendments to the sections involved will require troublesome amendment of the directory usually result in this being a bad idea. In an appropriate case, use these patterns:

DIRECTORY:

Sections 38.01, 38.02, 38.03, and Florida Statutes, are amended to read:

TITLE:

amending ss. 38.01-38.04, 38.04, F.S.;



## AMENDING AN ENTIRE CHAPTER OR SPLITTING A CHAPTER INTO PARTS

Directories for amending whole chapters or splitting existing chapters into two or more parts can become quite complicated depending on the details of each situation. Sometimes a chapter can be addressed as a group of sections:

### DIRECTORY

### TITLE:

Chapter 38, Florida Statutes, consisting of sections 38.01, 38.02, 38.03, and 38.04, Florida Statutes, is amended to read:

amending ch. 38, F.S.;

Other times it makes more sense to address each section with a separate directory. As to splitting existing chapters into parts, there is more than one approach to this as well. Sections 1 and 6 of chapter 94-224, Laws of Florida, are somewhat instructive in this regard:

Section 1. Part I of chapter 97, Florida Statutes, consisting of sections 97.011, 97.012, 97.021, 97.023, and 97.025, Florida Statutes, is created and entitled "General Provisions."

Section 6. Part II of chapter 97, Florida Statutes, consisting of sections 97.032, 97.041, 97.051, 97.052, 97.053, 97.055, 97.057, 97.058, 97.061, 97.071, 97.073, 97.1031, and 97.105, Florida Statutes, is created and entitled "Florida Voter Registration Act."

# CREATING FLORIDA STATUTES

## GENERAL PROCEDURES

It is not necessary when creating a section that will be placed in the Florida Statutes to assign that section a specific section number. Because of the restrictions associated with the statutory numbering system, it is sometimes better not to. If you do wish to designate a specific location, it is essential to adhere to certain requirements, or a more appropriate number will be chosen by the statute editors. First of all, check the Table of Repealed and Transferred Sections in the current Florida Statutes Index or Search and Browse, and any later supplementary tables, to be sure that the number you choose has not been used before. Be certain you choose a number that will place the new section where you want it in the chapter and leave a few unused numbers on either side of the new number for future use. For example, if you wish to create a section between existing sections 27.12 and 27.13, the number "27.125" would be a good choice. Further discussion may be found under the heading "Numbering system" in the Preface to Florida Statutes. **Do not assign a statute number to material that is local or temporary in nature.**

DIRECTORY:

Section 27.125, Florida Statutes,  
is created to read:

TITLE:

creating s. 27.125, F.S.;

If you are uncertain as to which chapter of the statutes the created section should be assigned to, leave this task to the statute editors. In such a case, no directory is required and the text of the section immediately follows "Section 1."

### **CREATING MORE THAN ONE CONSECUTIVE SECTION**

**DIRECTORY:**

Sections 38.25, 38.26, and 38.27,  
Statutes, are created to read:

**TITLE:**

creating ss. 38.25-Florida  
38.27, F.S.;

### **CREATING AN ENTIRE CHAPTER**

**DIRECTORY:**

Chapter 77, Florida Statutes,  
of sections 77.01, 77.02, 77.03,  
77.04, 77.05, 77.06, and 77.07,  
is created to read:

**TITLE:**

creating ch. 77, F.S.; consisting

### **CREATING A PART**

**DIRECTORY:**

Part III of chapter 99, Florida  
Statutes, consisting of  
sections 99.31, 99.33, and  
99.35, is created to read:

**TITLE**

creating pt. III of  
ch. 99, F.S.;

**-OR-**

DIRECTORY:

Chapter 76, Florida Statutes,  
is designated part I of  
said chapter, and part II,  
consisting of sections  
76.201, 76.205, and 76.209,  
is created to read:

TITLE:

creating pt. II of  
ch. 76, F.S.;

## **STYLE AND USAGE**

The purpose of this section is to summarize briefly those basic principles of English style and usage that are most often violated in the drafting of bills and to discuss the exceptions to ordinary practice that are peculiar to bill drafting. For the most part, standard English style and usage should be followed. The drafter should always use a good dictionary and the spellcheck feature on his or her computer. In addition, the *U.S. Government Printing Office Style Manual*, to which the style of the Florida Statutes primarily conforms, can be very helpful.

### **Capitalization**

The names of political entities, titles of officers, proper names of persons and chartered organizations, and proper names of state and local agencies are capitalized. However, references to these proper names (i.e., "the department," "such act," or "the state") are not capitalized. The following are examples of commonly used proper names and other terms arranged alphabetically by topic with the proper capitalization indicated:

#### **Acts (Popular names)**

"Florida Retirement System Act"  
"The Florida Election Code"  
"Workers' Compensation Law"

#### **Agencies (state and federal)**

Department: Department of Management Services  
Division: Division of Human Resource Development  
Bureau: Bureau of Aircraft

Board:	State Board of Education
Commission:	Public Service Commission
Council:	Small Business Advisory Council
Committee:	Human Rights Advocacy Committee
Authority:	Jacksonville Transportation Authority
Federal:	United States Department of Veterans Affairs

### **Colleges and universities**

Tallahassee Community College  
State Community College System  
University of Florida  
State University System

### **Constitutions (state and federal)**

State Constitution  
United States Constitution

### **Courts and rules of court**

Florida Supreme Court; Supreme Court  
First Appellate District  
District Court of Appeal, First District  
Second Judicial Circuit  
Circuit Court, Second Circuit  
County Court in Liberty County  
United States Supreme Court  
Rules of Criminal Procedure

### **Florida Statutes**

Internal cross references are not capitalized. Thus:

chapter 627  
part VII  
s. 232.01  
subsection (1)  
paragraph (a)

## **Funds**

General Revenue Fund  
Internal Improvement Trust Fund  
State Treasury

## **Governments (state and federal)**

Florida; State of Florida  
Florida Government  
United States  
United States Government; Federal Government

## **Highways**

State Road 19

## **Legislative bodies (state and federal)**

Florida Legislature; State Legislature; Legislature  
Florida Senate; Senate  
Florida House of Representatives; House  
of Representatives  
United States Congress; Congress

## **Officers**

Governor and Cabinet  
Chief Financial Officer  
Attorney General (and all other cabinet officers)  
State Fire Marshal  
Senator; Representative  
President of the Senate; Speaker of the House  
of Representatives  
United States Congresswoman  
United States Congressman  
Supreme Court Justice  
Chief Justice  
circuit judge  
county court judge  
state attorney; public defender

city commissioner; mayor  
sheriff (and all other county officers)

### **Political subdivisions**

County: Leon County  
City: City of Tallahassee  
Town: Town of Bronson  
District: Central and Southern Florida  
Flood Control District

### **Miscellaneous**

Board of County Commissioners of Leon County  
Florida Retirement System  
United States Armed Services  
The Florida Bar  
Title II of the Social Security Act

### **Punctuation**

When drafting bills, pay particular attention to punctuation. The addition or omission of a punctuation mark can change the entire meaning of a sentence.

Be sure the punctuation you use is an aid to understanding, not a source of confusion. Don't be guilty of overuse of commas; if in doubt in a specific situation, consult a basic English grammar book. Whatever you do, punctuate consistently.

### **Specifying time periods**

When specifying a time period, make clear what the first and last days are.

Don't say:

from July 1, 2005, to ....



but say  
after June 30, 2005, and before ....

When writing a legal provision of continuing effect, don't say "now," "heretofore," or "hereafter" to relate events to the time when the provisions take effect; instead, say something like "on the effective date of this act." Beware of other ambiguities: Does "2 years' service" mean continuous service for 2 years, or does it allow adding noncontinuous periods totaling 2 years?

### **Expressing exact time**

Use these forms:

10:30 p.m.

12 noon

10 a.m.

"O'clock" is unnecessary.

### **Dates**

Use these forms:

March 2005 (Notice there are no commas.)

October 1, 2005 (Followed by a comma if the  
sentence continues.)

Use "annually" instead of phrases such as "each and every year."

Examples:

The report required by this act shall be  
filed with the department on July 1, 2005, and

supplements shall be submitted on July 1 annually thereafter.

All persons appointed to the commission during March 2005 shall become members of the council created by this act.

## **Age**

Express age precisely. Don't say "more than 17 years old"; it is not clear whether this means anyone who has reached the 17th anniversary of his or her birth or means only one who has become 18 years of age. Say instead "who has passed his or her 17th birthday" or "who is 18 years of age or older," depending on which you mean. Don't say "between ages 17 and 45," but say "between 17 and 45 years of age, inclusive," or "at least 17 but not more than 45 years of age."

## **Numbers**

Numbers from one through nine are spelled out; 10 and above appear as numerals, EXCEPT that in the following categories numerals are always used:

Dates: July 1

Time: 10 a.m.

Measurements: 5 miles

Money: \$12 (Notice that it is unnecessary to show a decimal point and two zeros when specifying whole dollar amounts.)

6 cents (Notice that the word "cents" is used, not the symbol.)

\$13 million (With the exception of claim bills, monetary amounts in millions of dollars should be written in this manner when specifying even amounts.)

Percentages: 7 percent (Notice that the word "percent" is used, not the symbol.)

Fractions are generally spelled out and hyphenated (one-half). However, fractions modifying a unit of measurement (2 -inch pipe) or mixed with whole numbers (22 times) are written numerically.

In tables, such as fee schedules or population classifications, numerals should be used. In "whereas" clauses, the drafter may use his or her own discretion.

### **Distinguish between "shall" and "may"**

"Shall" imposes an enforceable duty and is generally mandatory. Don't use "will" when you mean "shall."

"May" authorizes or grants permission and is usually permissive.

### **Avoid "State of Florida"**

It is not necessary to specify the "State of Florida." Since Florida cannot enact legislation for any other state, usually "the state" or "this state" will be sufficient.

## Subdividing a section

Both the Florida Statutes and the bodies of bills are subdivided according to the following pattern:

987.01 This is a catchline.--The text of every Florida Statutes section is introduced by a catchline. When a section is subdivided, it also sometimes has an "introductory paragraph" such as the one you are now reading. The following are examples of the pattern that is used when a section is subdivided:

(1) SUBSECTION CATCHLINE.--This is a subsection. Subsections are designated by arabic numerals within parentheses. If a subsection has its own catchline (most don't), it is capitalized as shown here.

(a) Paragraph catchline.--This is a paragraph. If a paragraph has its own catchline, it should be styled as shown here; i.e., the same as the catchline for the whole section.

1. Subparagraph catchline.--This is a subparagraph. A subparagraph begins with an arabic numeral followed by a period.

a. This is a sub-subparagraph. Florida Statutes sections are seldom broken down any further, but, if the occasion demands, we have:

(I) The seldom seen sub-sub-subparagraph, which is designated by a Roman numeral within parentheses. While there is presently no example of any further subdivision of a section in the Florida Statutes, the next level down would be:

(A) The mythical sub-sub-sub-subparagraph, which is designated by a capital letter within parentheses.

Notice that this sample is incomplete; in actual practice the common-sense rule that "division" implies at least two parts applies. Thus, there should be at least a subsection (2), paragraph (b), etc. It is never correct to leave a subdivision of a section unnumbered or unlettered.

Examples of lengthy sections that have been subdivided to a high degree are sections 212.08 and 627.351, Florida Statutes, 2004.

### **"Flush left"**

Occasionally, after a section has been subdivided, the drafter may desire to add a general statement that is to apply to all of the preceding subdivisions. If this statement were simply "tacked on" to the end of the last subdivision, it would seem to apply only to that subdivision. The solution is known in printer's language as "four point space flush left," which means that following an extra blank line, the general statement appears flush with the left margin. The segment beginning "Notice that this sample..." in the preceding example is a "flush left" segment. Examples in Florida Statutes, 2004, can be found in ss. 220.731 and 1002.22(3), which also have introductory paragraphs.

### **Punctuating subdivisions**

When a section is subdivided into a series of subsections, paragraphs, or subparagraphs, if the intention is to have each listed element apply individually, punctuate the end of each subdivision with a semicolon, ending with “; or” before the final subdivision:

901.21 Search of person arrested.--

(1) When a lawful arrest is effected, a peace officer may search the person arrested and the area within the person's immediate presence for the purpose of:

- (a) Protecting the officer from attack;
- (b) Preventing the person from escaping; or
- (c) Discovering the fruits of a crime.

If the intention is to have all the elements listed apply jointly, punctuate the end of each subdivision with a period:

455.701 Disclosure of financial interest by production.--

(1) A health care provider shall not refer a patient to an entity in which such provider is an investor unless, prior to the referral, the provider furnishes the patient with a written disclosure form, informing the patient of:

- (a) The existence of the investment interest.
- (b) The name and address of each applicable entity in which the referring health care provider is an investor.
- (c) The patient's right to obtain the items or services for which the patient has been referred at the location or from the provider or supplier of the patient's choice, including the entity in which the referring provider is an investor.
- (d) The names and addresses of at least two alternative sources of such items or services available to the patient.

**Keep ideas parallel**

When enumerating ideas, make them all parallel, both in meaning and grammatical structure. Avoid statements such as: "The applicant shall state his or her name, address, birthday, and shall file it with the Department of State."

This is especially important to remember when listing subdivisions after an introductory statement. Don't repeat introductory material unnecessarily, and be certain all the subdivisions make grammatical sense when read with the introductory statement.

In the following example, paragraph (b) unnecessarily repeats "shall contain" and paragraph (c) is not parallel--it does not follow the introductory statement.

- (1) The application shall contain:
  - (a) The applicant's name and address.
  - (b) Shall contain the applicant's birth date.
  - (c) Shall be filed with the Department of State.

Also, be careful not to mix tenses. In the following example, "were" (which is past tense) should be changed to match the present tense "are."

Applications which are accompanied by the correct fee but which were received after the deadline shall be returned to the applicant.

### **Be aware of the ambiguities inherent in "and" and "or"**

"And" usually implies that the elements are to be considered jointly, that all listed requirements must be met or all conditions apply. "Or" implies that the listed elements may apply individually, although it is generally understood they can also be taken together. Thus, a requirement that an applicant "be 21 years of age, a veteran of the armed forces, and a college graduate" means that all three qualifications are required. A requirement that an applicant "be 21 years of age, a veteran of the armed forces, or a college graduate" means that an applicant meeting any one or more of the requirements is qualified.

In a given context either term may be ambiguous, particularly when modifiers are being joined. For example, does "charitable and educational institutions" mean institutions that are both charitable and educational, or does it mean those that are either charitable or educational?

In spite of these problems, avoid falling back on the use of "and/or." Make your meaning clear by using repetition or clarifying words such as "or both" or "either," if necessary.

### **Be specific; eschew "legalese"**

Very seldom is it necessary to use "such" or "said"; in most cases an article such as "the" will be sufficient.

Vague terms such as "above" and "below" or "herein" should be replaced with specific citations or references.

Avoid couplets such as "null and void" and "each and every" and inflated phrases such as "be and the same is hereby." "Void," "each," and "is" will do just as well.

### **Avoid the future, the negative, and the plural**

A statutory provision meant to have continuing effect should be phrased in the present tense--the way it should be read at the time it will be consulted or used for problem solving. Instead of saying "It shall be a misdemeanor of the second degree....," say "It is a misdemeanor of the second degree...."



If a provision can be phrased either positively or negatively, use the positive. Avoid especially the confusing double negative. Instead of "All licensees except those who have not paid the fee....," say "All licensees who have paid the fee...."

Phrasing provisions in the plural can lead the drafter into awkward grammatical corners. Whenever possible, use the singular: thus, a requirement that "All taxpayers who claim an exemption retroactive to the date they purchased their property shall state on their respective applications..." becomes a problem with the awkward use of "they" and "their" and the attempt to clarify by use of the term "respective."

"Each taxpayer who claims..." leads to no such problems.

## **FINAL CHECKLIST**

1. Check for presence of "A bill to be entitled" (or the appropriate resolution or memorial designation) and the enacting (or appropriate resolving) clause.
2. Check to see that the title matches the body of the bill. In particular, Florida Statutes and Laws of Florida sections being amended, created, or repealed should be cited in the title, and the substance of repealed sections should be briefly described. If the bill includes any of the elements listed on page 30, the title should so indicate.
3. TRIPLE CHECK citations in the title, directories, and sections themselves to be **sure** they correspond. Be certain that the statute text shown in

the bill exactly matches what the directories say is being amended or created. If a directory states that an entire section is to be amended, the text of the whole section should be shown, not just a few subsections. Conversely, do not state in the directory that an entire section is to be amended if it is intended to set forth and amend only certain subdivisions of that section.

4. Make sure all title and directory citations include "F.S.," "Florida Statutes," or "Laws of Florida," whichever is appropriate.

5. Check page, section, and subdivision numbering to be sure they are consecutive.

6. Verify all cross references, **especially** those to other sections of the bill.

7. Check the whole bill for omissions, misspellings, and typographical errors.

8. Check to make sure the effective date is correct.